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Honorable Rosanna M. Peterson

4  
5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF WASHINGTON**

7 R.W., individually and on behalf  
of his marital community,

8 Plaintiff,

9 v.

10 COLUMBIA BASIN COLLEGE,  
11 a public institution of higher  
education, RALPH REAGAN, in  
12 his official and individual  
capacities, LEE THORNTON, in  
13 his official and individual  
capacities,

14  
15 Defendants.

NO. 4:18-05089-RMP

DEFENDANTS'  
STATEMENT OF  
MATERIAL FACTS

16 Pursuant to LR 56.1, the Defendants Columbia Basin College, Ralph Reagan  
17 and Lee Thornton submit the following Statement of Material Facts:

18 1. On May 25, 2018 R.W. filed a Complaint For Damages. *See* ECF  
19 No. 1.

20 2. The Complaint pleads five causes of action: (1) a 42 U.S.C. § 1983 First  
21 Amendment claim; (2) a 42 U.S.C. § 1983 Fourteenth Amendment Equal  
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1 Protection claim; (3) a 42 U.S.C. § 12132 Disability Discrimination claim; (4) a 29  
2 U.S.C. § 794 Disability Discrimination claim; and (5) a RCW 49.60 Disability  
3 Discrimination claim. ECF No. 1 at 7:1-9:11. The Complaint names Columbia  
4 Basin College, Ralph Reagan and Lee Thornton as the defendants. ECF No. 1 at  
5 2:4-14.

6 3. The Defendants jointly filed the Defendants' Answer to Plaintiff's  
7 Complaint for Damages and Jury Demand on August 1, 2018. ECF No. 12 at 1.  
8 In relevant part, the Answer pleaded both Eleventh Amendment Immunity and  
9 Qualified Immunity as affirmative defenses. ECF No. 12 at 8:6-11.

10 **A. R.W.'s 2017 Enrollment in Columbia Basin College's Nursing**  
11 **Program**

12 4. In January 2017, R.W. re-entered the nursing program at Columbia  
13 Basin College. R.W. Dep. at 54:20-55:24.<sup>1</sup> He had previously withdrawn from the  
14 program in 2016 due to a back condition. R.W. Dep. at 54:20-55:24.

15 5. Upon his return to the program in 2017, R.W. experienced difficulty  
16 consistently meeting the demands of the program. Cooke Dep. at 58:24-59:23,  
17 60:23-61:11, 62:6-64:2.<sup>2</sup>

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19 <sup>1</sup> Excerpts of the transcript of the R.W. deposition is Exhibit 2 to the  
20 Declaration of Carl P. Warring filed contemporaneously with this motion.

21 <sup>2</sup> Excerpts of the transcript of the Valerie Cooke deposition is Exhibit 3 to  
22 the Declaration of Carl P. Warring filed contemporaneously with this motion.

1           6. In February 2017, he received an academic progress alert after he fell  
2 behind in assignments. R.W. Dep. at 57:22-59:17, 67:15-68:20, Ex. 5. By mid-  
3 term, R.W. was below the minimum points required to successfully complete at  
4 least one of his courses. R.W. Dep. at Ex. 4, 6-7.

5           7. In March, Valerie Tucker, a faculty member in the nursing program,  
6 scheduled time to meet with R.W. on March 7<sup>th</sup> to review continuing faculty  
7 concerns about his academic performance. Cooke Dep. at 63:14-64:16, 84:4-86:5,  
8 Ex. 8; Warring Dec. at Ex. 7. R.W. participated in the scheduling the meeting, but  
9 he ultimately could not attend. Cooke Dep. at 64:5-8; Warring Dec. at Ex. 7.

10       **B. R.W.'s March 2017 Disclosure of Homicidal Ideation**

11           8. On March 6, 2017, the day before the scheduled meeting, R.W.  
12 admitted himself to Lourdes Medical Center Transitions facility for evaluation and  
13 treatment of a mental health crisis. ECF No. 1 at 3:16-4:4.

14           9. On March 6, 2017, R.W. reported to his primary care provider that he  
15 had been having a lot of anger issues. Cabasug Dep. at Ex. 3 (March 6, 2017  
16 Progress Note).<sup>3</sup>

17           10. He also reported that he had thoughts of hurting his instructors,  
18 including a specific plan for maiming and even killing them, for about a week.

19 \_\_\_\_\_  
20           <sup>3</sup> Excerpts of the transcript of the Dr. Michael Cabasug deposition is  
21 Exhibit 6 to the Declaration of Carl P. Warring filed contemporaneously with this  
22 motion.

1 Cabasug Dep. at Ex. 3 (March 6, 2017 Progress Note). R.W. himself agrees that  
2 the thoughts and imagery of the ideation haunted, scared, and disturbed him. R.W.  
3 Dep at 72:13-17, 77:16-78:13.

4 11. In response to R.W.'s disclosure, Dr. Cabasug contacted crisis  
5 response to evaluate R.W. Cabasug Dep. at Ex. 3 (March 6, 2017 Progress Note).  
6 To this date, Dr. Cabasug continues to believe that it was medically appropriate  
7 to have crisis response evaluate R.W. Cabasug Dep. at 28:8-29:14.

8 12. Araceli Perez, a crisis responder, met with R.W. at Dr. Cabasug's office.  
9 Perez Dep. at 16:3-15, 18:8-11.<sup>4</sup> R.W. told Ms. Perez that he had just returned to  
10 school after a year off, was experiencing sleep deprivation, eating poorly, and  
11 feeling overwhelmed. Perez Dep. at 25:24-27:12, Ex. 2. R.W. also reported that  
12 bad grades and feedback from his instructors had triggered his thoughts to harm  
13 them. Perez Dep. at 27:2-12, Ex. 2.

14 13. Specifically, R.W. identified Kim Tucker, Valerie Cook, and Alma  
15 Martinez as the instructors he had thoughts of killing. Perez Dep. at 37:11-19.  
16 R.W. also disclosed he had thought of two different ways to kill his instructors – by  
17 setting their offices on fire or by attacking them with a saw. Perez Dep. at 51:3-12.

18 14. Based upon what she heard, Ms. Perez recognized that she had a duty  
19 to warn the identified faculty members. Perez Dep. at 51:13. In her mind, the duty  
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21 <sup>4</sup> Excerpts of the transcript of the Araceli Perez deposition is Exhibit 1 to  
22 the Declaration of Carl P. Warring filed contemporaneously with this motion.

1 to disclose was not a close call. Perez Dep. at 51:13-18.

2 15. Perez gave R.W. the option of voluntarily admitting himself to  
3 Transitions or being involuntarily committed. Perez Dep. at 49:10-50-10; R.W.  
4 Dep. at 83:23-84:18. R.W. elected to check himself into Transitions. R.W. Dep.  
5 at 84:16-85:9.

6 16. At his Transitions' intake, R.W. confirmed his earlier reported  
7 homicidal ideation towards his instructors and having an idea of how he would  
8 carry out the act, but that he had not taken any steps to carry out his plan. Reagan  
9 Dep. at Ex. 17 (01150028).<sup>5</sup>

10 17. Two days after entering Transitions, R.W. sought to leave the  
11 treatment facility against medical advice, but he eventually agreed to remain after  
12 a second evaluation by Ms. Perez. Perez Dep. at 45:23-46:12, Ex. 5. R.W. was  
13 discharged from Transitions on March 10, 2017. R.W. Dep. at 97:16-18.

14 **C. The College's Response to R.W.'s Disclosure of His Homicidal**  
15 **Ideations**

16 18. On March 7, 2017 Ralph Reagan, Assistant Dean for Student Conduct  
17 and Activities, learned of R.W.'s homicidal ideation. Reagan Dep. at Ex. 2.

18 19. Reagan issued a letter to R.W. establishing an interim restriction that  
19 precluded R.W. from coming on the College's campuses pending an investigation  
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21 <sup>5</sup> Excerpts of the transcript of the Ralph Reagan deposition is Exhibit 4 to  
22 the Declaration of Carl P. Warring filed contemporaneously with this motion.

1 into the matter. Reagan Dep. at Ex. 2. Reagan based his decision to impose the  
2 interim restriction upon information that R.W. had expressed homicidal ideation  
3 relating to three specific instructors and that he identified two specific ways for  
4 killing the instructors. Reagan Dep. at 26:12-23, Ex. 3 (Bates No. 01130012).

5 20. Reagan considered the situation serious because the involved crisis  
6 responders had taken it seriously enough to initiate a duty to warn protocol. Reagan  
7 Dep. at 30:21-31:2.

8 21. On March 8, 2017, Reagan issued a second letter to R.W. Reagan Dep.  
9 at Ex. 4. The second letter set a meeting for March 16, 2017. Reagan Dep. at Ex.  
10 4. Reagan wanted to discuss R.W.'s disclosure of homicidal ideation as part of  
11 Reagan's investigation into whether a student conduct violation had occurred.  
12 Reagan Dep. at Ex. 4.

13 22. R.W.'s reported homicidal ideations triggered two separate, but related,  
14 processes. The first was the interim restriction process, which dealt with the  
15 temporary trespass of R.W. from the campus until the College could gather more  
16 information on the immediate threat he posed. The second was the student conduct  
17 process, which dealt with R.W.'s potential violation of the student conduct code.

#### 18 **D. The Interim Restriction Process**

19 23. On March 10, 2017, R.W. emailed Reagan requesting an appeal of the  
20 March 7, 2017 interim restriction. Reagan Dep. at Ex. 5. On March 14, 2017, the  
21 Student Appeals Board, chaired by Pat Campbell, upheld the interim restriction.  
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1 Reagan Dep. at Ex. 6.

2 24. On March 22, 2017, R.W. appealed the decision of the Student Appeals  
3 Board. Reagan Dep. at Ex. 7. On April 19, 2017 President Lee Thornton modified  
4 the interim restriction, lifting R.W.'s restriction from being present on the Pasco  
5 campus, but requiring R.W. to coordinate any need to be on the Richland campus  
6 with Reagan. Reagan Dep. at Ex. 8.

7 **E. The Student Conduct Process**

8 25. The March 16, 2017 initial student conduct meeting between Reagan  
9 and R.W. did not actually occur until March 22, 2017. Reagan Dep. at Ex. 9.

10 26. Following that meeting, Reagan sought additional information. Reagan  
11 Dep. at 62:24-63:14; 91:19-92:20. Specifically, Reagan (1) obtained and reviewed  
12 health care records from Dr. Michael Cabasug, R.W.'s primary care physician; (2)  
13 had a telephone conference with providers from Lourdes (Transitions) regarding  
14 R.W.'s evaluation and treatment; and (3) obtained and reviewed health care records  
15 from Lourdes—all as part of his information gathering process—before deciding  
16 what, if any, sanction was appropriate. Reagan Dep. at 62:24-63:14; 91:19-92:20.

17 27. Reagan received Dr. Cabasug's records on April 4, 2017. Reagan Dep.  
18 at 118:22-119:6; 146:5-17. The records included a letter written by Dr. Cabasug.  
19 Reagan Dep. at 118:22-119:6; 146:5-17. Dr. Cabasug's letter described that R.W.'s  
20 homicidal ideation was out of character for R.W., Reagan Dep. at 120:15-121:11,  
21 but Dr. Cabasug stopped short of offering any assurance that R.W.'s homicidal  
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1 ideation would not return if R.W. resumed the nursing program. Cabasug Dep. at  
2 15:9-16:11.

3 28. Dr. Cabasug has testified that he cannot predict if R.W. will return to  
4 homicidal thinking or not if R.W. returns to the nursing program. Cabasug Dep.  
5 at 16:12-17:13, 45:13-46:10, 48:2-20.

6 29. Reagan spoke with Lourdes providers on or around April 13, 2017 and  
7 picked up Lourdes treatment records on April 14, 2017. Reagan Dep. at 91:23-  
8 92:15, 130:22-131:15, 147:20-25.

9 30. Although R.W. expected the Lourdes providers to support his return to  
10 the nursing program, Reagan remembers the providers expressing concerns about  
11 R.W.'s return. Reagan Dep. at 136:16-138:8.

12 31. These concerns are consistent with the treatment recommendations by  
13 Perez, who thought R.W. should be monitored closely in an outpatient program  
14 upon his discharge from Lourdes. Perez Dep. at 59:8-60:5. Perez made this  
15 recommendation because it is difficult to predict how a person will respond to  
16 their return to the community. Perez Dep. at 59:8-60:5.

17 32. In addition to the information he learned from the involved health care  
18 providers, Reagan was aware that R.W.'s homicidal ideation had already  
19 disturbed the involved instructors. Reagan Dep. at 104:1-105:13; 163:9-164:12,  
20 169:12-170:11, 177:6-178:11, Ex. 25. The instructors expressed fear of R.W.  
21 and no longer wanted him in their program. Reagan Dep. at 163:9-164:12. One,  
22



1 now former, instructor has explained that she cried, changed her schedule,  
2 changed the car she drove and was afraid everywhere she went. Tucker Dep. at  
3 76:9-19.

4 33. On April 20, 2017 Reagan issued his decision to impose sanctions.  
5 Reagan Dep. at Ex. 9. While Reagan found misconduct, he ultimately determined  
6 that R.W. could return to the nursing program in the Winter 2018 Quarter upon  
7 certain conditions.<sup>6</sup> Reagan Dep. at Ex. 9.

8 34. R.W. appealed Reagan's decision on May 4, 2017. Reagan Dep. at Ex.  
9 10. The Student Appeals Board, chaired by Michael Lee, upheld the sanctions on  
10 May 24, 2017. Reagan Dep. at Ex. 11.

11 35. R.W. appealed the Student Appeals Board decision on June 7, 2017.  
12 Reagan Dep. at Ex. 12. Ultimately, the President of the College, Lee Thornton,  
13 upheld the sanctions on June 12, 2017. Reagan Dep. at Ex. 13.

14 36. R.W. agrees that he was capable of complying with the conditions set  
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16 <sup>6</sup> Winter 2018 would have been the first opportunity for R.W. to return to  
17 the nursing program. *See* Hoerner Dec. at 2:11-20. The nursing program is  
18 structured such that a student must successfully complete each quarter before  
19 moving on to the next quarter. Hoerner Dec. at 1:20 – 2:6. Here R.W. admits  
20 that as of March 9, 2017, while he was still at Transitions, it was already too late  
21 for him to successfully complete the 2017 Winter Quarter. R.W. Dep. at 90:8-  
22 91:3, Ex. 12.

1 by Reagan, but he did not contact Reagan to resume his participation in the  
2 nursing program. R.W. Dep. at 105:24-106:18. To date, R.W. has not resumed  
3 the nursing program at Columbia Basin College, though that option still remains  
4 open to him.

5 DATED this 3rd day of June, 2019.

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DATED this 3rd day of June, 2019, at Spokane, Washington.

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